THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.25496 of 2006

Date: 22nd December 2006

Between:
K.Thimma Naidu,
S/o K.Madanna, aged 58 years,
Occ: Agriculture, r/o D.o.3/15,
L.I.C. Colony, JNTU Engineering
College Road, Anantapur,
Anantapur District.

... Petitioner.

And

1. The Returning Officer,
   Anantapur Rural Grama Panchayath,
   Anantapur Rural Mandal,
   Anantapur District and 3 others.

... Respondents.

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ORDER:

This Court issued Rule Nisi on 06.12.2006. Fourth respondent filed counter-affidavit. Heard Sri V.V.Anil Kumar, learned counsel representing petitioner, Sri V.V.Prabhakar Rao, learned counsel representing respondents 1 to 3 and Sri M.Subba Reddy, learned counsel representing respondent No.4.

2. The writ petition is filed for a writ of Mandamus declaring action of the respondents 1 and 2, as illegal, arbitrary and against the provisions of A.P. Gram Panchayat Act; and consequently set aside the election of Anantapur Gram Panchayat conducted on

01.12.2006 and pass such other suitable orders.

3. It is stated that the second respondent issued election notification for election of sarpanch, Anantapur Rural Gram Panchayat on 18.11.2006 and as per the election notification the candidates can file their nominations from 18.11.2006, last date for filing of nominations is 21.11.2006, the date fixed for scrutiny of nominations is 22.11.2006, for withdrawal of candidature and publication of contesting candidates is also fixed on 22.11.2006. As per the election schedule, polling date is fixed on 01.12.2006 and on the same day counting of votes and declaration of result also be announced. It is also stated that the petitioner and the 4th respondent filed their nominations for the said post on 18.11.2006 before the first respondent and the first respondent allotted Door (Talupu) symbol to the petitioner and Gas Stove symbol to the 4th respondent. The contest is between the petitioner and 4th respondent only as there are no other candidates in the fray. It is also stated that the 4th respondent with the connivance of the first respondent committed several irregularities/malpractice. The Returning Officer i.e., first respondent insisted the voters to put seal on Gas Stove symbol. It is also stated that on the day of polling, the police officials terrorized the voters, took the main supporters of the petitioner into custody and thereby did not allow them to franchise their vote.

4. It is also stated that after completion of polling the Returning Officer had taken up counting of votes in the presence of the petitioner, 4th respondent and agents. Some of the votes polled in

favour of the petitioner were declared invalid and the first respondent overruled the objections of the counting agents. Even votes polled in favour of the petitioner were put into the tray of the 4th respondent. It is also stated that after counting, first respondent declared that 4th respondent won the election. It is also further stated that as per the first respondent the total votes polled were 1764. In the first round of counting 292 were polled in favour of the petitioner and 236 votes were polled in favour of the 4th respondent. In the second round the petitioner secured 258 votes and the 4th respondent 288. In the third round the petitioner got 275 votes and 4th respondent got 297 votes. After clubbing the votes of three rounds petitioner got 825 votes and the 4th respondent got 832 votes and 107 votes were invalid. The first respondent declared the result and held that the 4th respondent elected as sarpanch with a margin of seven votes. It is also further stated that immediately after counting though the petitioner requested the first respondent for recounting of votes, without considering the request of the petitioner, the first respondent declared the 4th respondent as elected candidate. The said action is questioned in the present writ petition.

5. Sri V.V.Prabhakar Rao, learned Standing Counsel representing the second respondent, the State Election Commission and also R-1 and R-3 would submit that in such a case the remedy for the writ petitioner is to approach the election tribunal. No counter-affidavit as such is forthcoming. However, 4th

respondent filed counter-affidavit. It is stated in paragraph 2 of the counter-affidavit that it is true that second respondent had issued election notification for election to the office of Sarpanch, Anantapur Rural Gram Panchayat on 18.11.2006. All other facts relating to counting of votes and declaration of result though admitted, specific stand was taken that there are no irregularities. Substantially, those allegations were denied. It is stated that the first respondent had taken up counting of votes in the presence of the writ petitioner, 4th respondent and others and specific stand is taken that it is false to allege that the votes polled in favour of the writ petitioner were put in the tray earmarked to 4th respondent. But it is stated that it is true that 4th respondent got majority of 7 votes over the writ petitioner and hence first respondent had rightly declared the 4th respondent that he had won the election to the office of sarpanch of Anantapur Rural Gram Panchayat and Form-29 was issued after obtaining signature from both the contesting candidates on Form-28.

6. In paragraph 4 it is stated that it is true that the votes polled were 1764. In the first round of counting 292 votes were polled in favour of the writ petitioner and 256 votes were polled in favour of the 4th respondent. But it is falsely alleged in the writ petition that in the first round only 236 votes were polled in favour of the 4th respondent. In the second round the writ petitioner had secured 258 votes and the 4th respondent had secured 288 votes. There is no dispute with regard to counting of second round of votes. In the third round the writ petitioner had secured 275 votes, whereas the

4th respondent had secured 297 votes and the same was also not disputed by anybody. Hence, by clubbing all the three rounds votes the first respondent had declared that the 4th respondent secured 832 votes and whereas the writ petitioner had secured 825 votes and as such 4th respondent had got a majority of 7 votes over the writ petitioner. Several other factual details also had been narrated in paragraphs 4, 5 and 6 of the counter-affidavit.

7. The representation dated 01.12.2006 of the writ petitioner requesting for recounting also had been referred to and it is stated that only with a view to create some cause of action this representation had been thought of and no such representation in favour of the petitioner was made to the first respondent.

8. In Form-26 certain defects in number of votes shown had been specifically pointed out and elaborate submissions were made in this regard. *Prima facie* on calculation of these number of votes, there appears to be some discrepancy, but however, this court is not inclined to express any further opinion since these are all factual controversies which may have to be gone into by an appropriate election tribunal. However, it is brought to the notice of this Court that already the writ petitioner had approached the election tribunal by filing E.O.P.No.10 of 2006 on the file of Junior Civil Judge, Anantapur. It is needless to say that such election O.Ps. are to be disposed of at an early date. In view of the same, the learned Election Tribunal-cum-Junior Civil Judge, Anantapur, to make an endeavour to dispose of the aforesaid election petition at an early date, preferably, within a period of four months from the

date of receipt of a copy of this order.

9. The writ petition is disposed of accordingly. No order as to costs.

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P.S.NARAYANA, J.

Date: 22nd December 2006.

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